

Jan 03, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEAN F. MCAVOY, CLERK

UNITED STATES OF AMERICA,
Plaintiff,
v.
ERASMO BIRRUETA LEMUS,
Defendant.

No. 2:12-CR-06012-EFS-2
[No. 4:17-CV-05167-EFS]

**ORDER DENYING § 2255 MOTION AS
UNTIMELY**

Before the Court is Defendant Erasmo Birrueta Lemus' Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255.¹ ECF No. 229. Based on the Court's prior order, ECF No. 230, the Court finds his Motion is untimely and therefore denies the relief requested therein.

On October 16, 2017, Mr. Lemus filed the instant Motion, ECF No. 229, in which he asks the Court to vacate his drug conviction based on a claim of ineffective assistance of counsel. Mr. Lemus argues that a combination of ineffective legal assistance and language barriers resulted in him inadvertently forfeiting his appeal rights by signing the plea agreement.

On October 24, 2017, the Court conducted a preliminary review of Mr. Lemus' Motion. In the resulting order, ECF No. 230, after setting forth the relevant facts and procedural history as well as the applicable law, the Court advised Mr. Lemus that his Motion appeared to

¹ Because Mr. Lemus brings this motion pro se, the Court construes his petition liberally. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

1 be untimely. See ECF No. 230. The Court therefore provided Mr. Lemus
2 with the opportunity to either withdraw or supplement his Motion to
3 explain why it should be considered timely. See ECF No. 230. Because
4 Mr. Lemus has not done so – and for the reasons stated in the Court’s
5 previous order, ECF No. 230 – the Court denies his Motion as untimely.
6 See 28 U.S.C. § 2255(f).

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. Defendant Erasmo Birrueta Lemus’ Motion to Vacate, Set Aside,
9 or Correct Sentence pursuant to 28 U.S.C. § 2255, **ECF**
10 **No. 229**, is **DENIED** as untimely.
- 11 2. The Court declines to issue a certificate of appealability.
12 See 28 U.S.C. § 2253(c) (allowing such a certificate “only
13 if the applicant has made a substantial showing of the denial
14 of a constitutional right”).
- 15 3. The Clerk’s Office is **DIRECTED** to **CLOSE** this file.
- 16 4. The Clerk’s Office is **DIRECTED** to **CLOSE** the corresponding
17 civil case, **No. 4:17-CV-05167-EFS**.

18 **IT IS SO ORDERED.** The Clerk’s Office is directed to enter this
19 Order and provide a copy to Mr. Lemus and the United States Attorney’s
20 Office.

21 **DATED** this 3rd day of January 2018.

22
23 s/Edward F. Shea
24 EDWARD F. SHEA
Senior United States District Judge
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